

Message Text

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ORIGIN EB-11

INFO OCT-01 EUR-25 ADP-00 TRSE-00 CAB-09 CIAE-00 COME-00

DODE-00 INR-10 NSAE-00 RSC-01 FAA-00 DOTE-00 IO-13

/070 R

DRAFTED BY EB/AVP:DBORTMAN:VLV

8/16/73 EXT. 22439

APPROVED BY EB/AVP:JASILBERSTEIN

TREASURY - MR. CLAWSON

CUSTOMS - MR. DICKERSON

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R 161842Z AUG 73

FM SECSTATE WASHDC

TO AMEMBASSY OTTAWA

INFO AMCONSUL TORONTO

AMCONSUL CALGARY

AMCONSUL HALIFAX

AMCONSUL MONTREAL

AMCONSUL VANCOUVER

AMCONSUL WINNIPEG

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E.O. 11652: N/A

TAGS: ETRN, CA

SUBJECT: CIVAIR - PRECLEARANCE

REF: STATE 154015

1. DURING PRECLEARANCE DISCUSSIONS IN MONTREAL AUGUST 1
CANDEL ASKED US TO PROVIDE NEW DRAFT FOR PRECLEARANCE
AGREEMENT INCORPORATING ANY IMPROVEMENT IN TEXT US HAS TO
SUGGEST SINCE US-CANADIAN PRECLEARANCE TALKS JUNE 27.
EMBASSY SHOULD PASS TEXT BELOW TO GOC IN RESPONSE THAT
REQUEST BUT SHOULD INFORM CANADIANS THAT US HAS SOME FURTHER
SUGGESTIONS (NOT INCLUDED IN THIS TEXT) FOR ARTICLES 2 AND
6. WE WOULD URGE EARLY MEETING WITH APPROPRIATE LEGAL
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ADVISERS PRESENT TO DISCUSS THESE AND ANY OTHER DIFFERENCES
WHICH MAY REMAIN IN RESPECT TO TEXT.

2. BEGIN TEXT:

- MEMORANDUM OF UNDERSTANDING

THE GOVERNMENTS OF THE UNITED STATES OF AMERICA AND CANADA AGREE THAT PRECLEARANCE FACILITATES AIR TRAVEL BETWEEN THE TWO COUNTRIES AND THAT IT SHOULD BE CONTINUED (AND ESTABLISHED) FOR ELIGIBLE FLIGHTS AT VARIOUS LOCATIONS IN CANADA AND THE UNITED STATES, SUBJECT TO THE PROVISION OF FACILITIES ADEQUATE TO ENABLE THE UNITED STATES AND CANADIAN INSPECTION AGENCIES TO USE THEIR MANPOWER EFFICIENTLY AND TO ENSURE PROPER SECURITY SAFEGUARDS FOR

PASSENGERS, AIRCRAFT, CREW, BAGGAGE AND AIRCRAFT STORES ENTERING THE UNITED STATES AND CANADA AND TO OTHER CONDITIONS SET FORTH IN THIS MEMORANDUM OF UNDERSTANDING.

DEFINITIONS

AS USED IN THIS MEMORANDUM OF UNDERSTANDING:

(A) "PRECLEARANCE" REFERS TO THE PROCEDURE OF CONDUCTING IN THE TERRITORY OF ONE OF THE PARTIES INSPECTIONS REQUIRED FOR ENTRY INTO THE TERRITORY OF THE OTHER PARTY.

(B) "ELIGIBLE FLIGHTS" MEANS ANY FLIGHT BY AN AUTHORIZED SCHEDULED OR CHARTER AIR CARRIER OF EITHER PARTY INCLUDING FERRY FLIGHTS, BUT NOT INCLUDING AIR-TAXI-TYPE OPERATIONS (PRIVATE AND STATE AIRCRAFT ARE NOT INCLUDED).

(C) "LAW ENFORCEMENT OFFICER" INCLUDES LOCAL PEACE OFFICERS AS WELL AS THE ROYAL CANADIAN MOUNTED POLICE AND LAW ENFORCEMENT OFFICERS OF FEDERAL AGENCIES IN THE UNITED STATES.

ARTICLE 1

THE PARTIES AGREE: (A) THAT PRECLEARANCE SHALL BE CONDUCTED AT THE LOCATIONS SPECIFIED IN ANNEX A TO THIS LIMITED OFFICIAL USE
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MEMORANDUM OF UNDERSTANDING; (B) THAT UPON MUTUAL AGREEMENT EXPRESSED IN WRITING, PRECLEARANCE MAY BE ESTABLISHED BY THE UNITED STATES AT ADDITIONAL LOCATIONS IN CANADA OR BY CANADA AT LOCATIONS IN THE UNITED STATES UNDER THE CONDITIONS SPECIFIED IN THIS MEMORANDUM UTILIZING THE CRITERIA SPECIFIED IN ANNEX B TO THIS MEMORANDUM; AND (C) THAT PRECLEARANCE WILL REMAIN IN EFFECT AT THE DESIGNATED LOCATIONS UNLESS TERMINATED IN ACCORDANCE WITH THE PROVISIONS OF THIS MEMORANDUM.

ARTICLE 2

WHERE PRECLEARANCE EXISTS IN THE TERRITORY OF A PARTY,
THAT PARTY SHALL:

(A) PERMIT INSPECTION OFFICERS OF THE OTHER PARTY TO
CARRY OUT PRECLEARANCE OF PASSENGERS, AIRCRAFT, CREW, BAG-
GAGE AND AIRCRAFT STORES DESTINED NONSTOP TO THE TERRITORY
OF THE INSPECTING PARTY AND, IN THIS CONTEXT, PERMIT SUCH
INSPECTION AGENCIES TO DETERMINE THE PROCEDURES AND THE
UTILIZATION OF MANPOWER IN CONNECTION WITH PRECLEARANCE.

(B) PROVIDE AT EACH PRECLEARANCE LOCATION, IN ACCORD-
ANCE WITH ARTICLE 4, FACILITIES ACCEPTABLE TO THE OTHER
PARTY AS FURTHER DEFINED IN ANNEX C TO THIS AGREEMENT.

(C) PERMIT THE INSTALLATION AND OPERATION BY THE
OTHER PARTY OF SUCH COMMUNICATIONS AND OTHER MODERN INSPEC-
TION AIDS AS IT REQUIRES.

(D) PROVIDE APPROPRIATE LAW ENFORCEMENT ASSISTANCE TO
THE OTHER PARTY'S INSPECTORS INCLUDING INTER ALIA:

(1) SEARCH BY A LAW ENFORCEMENT OFFICER OF ANY
PERSON AND HIS EFFECTS WHICH ARE SUBJECT TO PRECLEARANCE
FOR MERCHANDISE OR OTHER ARTICLES THE POSSESSION OF WHICH
CONSTITUTES AN OFFENSE UNDER THE LAW OF THE TERRITORY IN
WHICH PRECLEARANCE TAKES PLACE AT THE REQUEST AND IN THE
PRESENCE OF THE OTHER PARTY'S INSPECTION OFFICER IF, UNDER
THE LAW OF THE TERRITORY IN WHICH PRECLEARANCE TAKES PLACE,
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THAT LAW ENFORCEMENT OFFICER HAS SUFFICIENT AUTHORITY AND
GROUNDS.

(2) SEARCH BY A LAW ENFORCEMENT OFFICER OF ANY
ACCOMPLICE OR ABETTOR OF A PERSON SEARCHED FOR REASONS
AND UNDER THE CONDITIONS SPECIFIED IN PARAGRAPH (1) ABOVE.

(E) IF A SEARCH CONDUCTED PURSUANT TO PARAGRAPH (D)
(1) AND (2) ABOVE DISCLOSES MERCHANDISE OR OTHER ARTICLES
THE POSSESSION OF WHICH CONSTITUTES AN OFFENSE UNDER THE
LAW OF THE TERRITORY IN WHICH PRECLEARANCE TAKES PLACE, THE
LAW ENFORCEMENT OFFICER SHALL TAKE WHATEVER STEPS WOULD
HAVE ORDINARILY BEEN TAKEN IF THE ARTICLES AND/OR MERCHAN-
DISE WOULD HAVE BEEN FOUND UNDER CIRCUMSTANCES UNRELATED
TO PRECLEARANCE.

ARTICLE 3

THE PARTY CONDUCTING PRECLEARANCE SHALL:

(A) PROVIDE A SUFFICIENT NUMBER OF INSPECTORS TO

CARRY OUT WITH REASONABLE SPEED AND EFFICIENCY PRECLEARANCE OF PASSENGERS, CREW, BAGGAGE AND AIRCRAFT STORES ON ELIGIBLE FLIGHTS OF CARRIERS TO WHICH PRECLEARANCE HAS BEEN EXTENDED IN ACCORDANCE WITH ARTICLE 5;

(B) CONDUCT INSPECTIONS OF PASSENGERS, CREW, BAGGAGE AND AIRCRAFT STORES FOR ELIGIBLE FLIGHTS UNLESS THE OFFICERS IN CHARGE OF ITS INSPECTION AGENCIES, AFTER CONSULTING WITH THE AIRPORT MANAGER, THE APPROPRIATE AUTHORITIES

OF THE OTHER PARTY AND THE AIR CARRIERS, DETERMINE THAT ADEQUATE MANPOWER IS TEMPORARILY UNAVAILABLE OR THE ACCUMULATION OF PASSENGERS WILL OVERTAX FACILITIES. NOTWITHSTANDING THE FOREGOING, THE INSPECTING AGENCIES MAY REQUIRE POSTCLEARANCE WHEN NECESSARY.

ARTICLE 4

THE PARTIES AGREE THAT THE COSTS RELATED TO PRECLEAR-LIMITED OFFICIAL USE
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ANCE FACILITIES AND SERVICES MAY BE RECOVERED FROM THE USER AIR CARRIERS. SUCH COSTS AND CHARGES SHALL BE DETERMINED ON A FAIR AND EQUITABLE BASIS.

ARTICLE 5

THE PARTIES AGREE THAT EACH AIR CARRIER SHOULD HAVE THE OPTION TO USE EITHER PRECLEARANCE OR POSTCLEARANCE SUBJECT TO THE FOLLOWING CONDITIONS:

(A) AN AIR CARRIER MAY APPLY FOR PRECLEARANCE FOR ANY OR ALL OF ITS ELIGIBLE FLIGHTS AT ANY OR ALL OF THE PRECLEARANCE LOCATIONS LISTED IN ANNEX A. THE INSPECTION-AL AGENCIES MAY REQUIRE A REASONABLE DELAY BEFORE COMPLIANCE IN ORDER TO OBTAIN OR REDUCE PERSONNEL OR FACILITIES REQUIRED BY THE ANTICIPATED CHANGES IN SERVICE.

(B) AN AIR CARRIER DESIRING TO WITHDRAW ENTIRELY FROM PRECLEARANCE AT ANY LOCATION MUST GIVE TWELVE MONTHS NOTICE TO BOTH PARTIES, BUT IF NEITHER PARTY OBJECTS, IT MAY WITHDRAW SOONER. TO WITHDRAW FROM PRECLEARANCE ONLY IN RESPECT TO ONE OR MORE ELIGIBLE FLIGHTS, THE INSPECTION AGENCIES MAY REQUIRE REASONABLE NOTICE.

(C) NOTWITHSTANDING A AND B ABOVE, A CHARTER FLIGHT MAY BE PERMITTED TO PARTICIPATE IN PRECLEARANCE IF AN APPLICATION FOR PRECLEARANCE IS MADE TWO WEEKS IN ADVANCE TO THE AGENCIES CONDUCTING THE INSPECTION PROVIDED THAT THE INSPECTION AGENCIES ARE SATISFIED THAT THE FACILITIES AND PERSONNEL ARE ADEQUATE.

(D) A PARTY MAY DECLINE TO CONDUCT PRECLEARANCE ON ANY AIR CARRIER UNTIL THAT CARRIER HAS FILED TARIFFS ACCEPTABLE TO THE APPROPRIATE GOVERNMENT REGULATORY AGENCY PERMITTING IT TO DENY CARRIAGE TO ANYONE FAILING TO SUBMIT TO A PRECLEARANCE INSPECTION AND SEARCH AND TO ANYONE WHO, HAVING SUBMITTED TO SUCH INSPECTION AND SEARCH, IS FOUND INELIGIBLE BY THE INSPECTION AGENCIES TO FLY ON A PRECLEARED FLIGHT.

ARTICLE 6

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EACH PARTY AGREES TO TAKE ALL APPROPRIATE STEPS TO PROTECT

(A) THE FACILITIES AND PREMISES USED BY THE OTHER PARTY IN PRECLEARANCE AGAINST ANY INTRUSION OR DAMAGE AND TO PREVENT ANY DISTURBANCE OF THE PEACE ON THE PREMISES;

(B) THE OFFICIAL ARCHIVES AND DOCUMENTS MAINTAINED BY THE INSPECTION AGENCIES.

ARTICLE 7

(A) EITHER PARTY MAY AT ANY TIME REQUEST IN WRITING CONSULTATIONS CONCERNING THE INTERPRETATION, APPLICATION AND MODIFICATION OF THIS MEMORANDUM OF UNDERSTANDING AND OF ITS ANNEXES. SUCH CONSULTATIONS SHALL BEGIN WITHIN 60 DAYS FROM THE DATE ON WHICH SUCH REQUEST IS RECEIVED BY THE OTHER PARTY.

ARTICLE 8

THIS MEMORANDUM OF UNDERSTANDING TOGETHER WITH ITS ANNEXES SHALL BECOME EFFECTIVE ON THE DATE OF ITS SIGNATURE AND SHALL REMAIN IN FORCE FOR AN INITIAL PERIOD OF THREE YEARS. THEREAFTER, IT SHALL CONTINUE TO BE IN FORCE UNLESS TERMINATED BY EITHER PARTY GIVING ONE YEAR NOTICE IN WRITING TO THE OTHER PARTY.

END TEXT. ROGERS

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Message Attributes

Automatic Decaptioning: X
Capture Date: 10 MAY 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AGREEMENT DRAFT, CUSTOMS CLEARANCES, AVIATION AGREEMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 16 AUG 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: garlanwa
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973STATE162650
Document Source: ADS
Document Unique ID: 00
Drafter: EB/AVP:DBORTMAN:VLV
Enclosure: n/a
Executive Order: N/A
Errors: n/a
Film Number: n/a
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t19730869/abqcendf.tel
Line Count: 264
Locator: TEXT ON-LINE
Office: ORIGIN EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: STATE 154015
Review Action: RELEASED, APPROVED
Review Authority: garlanwa
Review Comment: n/a
Review Content Flags:
Review Date: 07 SEP 2001
Review Event:
Review Exemptions: n/a
Review History: RELEASED <07-Sep-2001 by elyme>; APPROVED <13-Nov-2001 by garlanwa>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CIVAIR - PRECLEARANCE
TAGS: ETRN, CA, US
To: OTTAWA INFO TORONTO
CALGARY
HALIFAX
MONTREAL
VANCOUVER
WINNIPEG
Type: TE

Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005